

## §216.272

(2) Shutdown—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nm of any live, in the water, animal involved in a USE.

[74 FR 3909, Jan. 21, 2009, as amended at 76 FR 6701, Feb. 8, 2011; 77 FR 4922, Feb. 1, 2012]

### §216.272 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.277, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §216.270(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.270(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §216.270(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment ( $\pm 10$  percent of the number of takes indicated below):

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—110 (an average of 22 annually)

(B) Fin whale (*Balaenoptera physalus*)—870 (an average of 174 annually)

(C) Blue whale (*Balaenoptera musculus*)—3085 (an average of 617 annually)

(D) Minke whale (*Balaenoptera acutorostrata*)—665 (an average of 133 annually)

(E) Gray whale (*Eschrichtius robustus*)—27340 (an average of 5468 annually)

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—775 (an average of 155 annually)

(B) Pygmy sperm whales (*Kogia breviceps*)—830 (an average of 166 annually)

(C) Dwarf sperm whale (*Kogia sima*)—100 (an average of 20 annually)

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(D) Mesoplodont beaked whales (Blainville's, Hubb's, Perrin's, pygmy, and ginkgo-toothed) (*Mesoplodon densirostris*, *M. carlhubbsi*, *M. perrini*, *M. peruvianus*, *M. ginkgodens*)—690 (an average of 138 annually)

(E) Cuvier's beaked whales (*Ziphius cavirostris*)—2175 (an average of 435 annually)

(F) Baird's beaked whales (*Berardius bairdii*)—100 (an average of 20 annually)

(G) Unidentified beaked whales—555 (an average of 104 annually)

(H) Rough-toothed dolphin (*Steno bredanensis*)—100 (an average of 20 annually)

(I) Bottlenose dolphin (*Tursiops truncatus*)—7480 (an average of 1516 annually)

(J) Pan-tropical spotted dolphin (*Stenella attenuata*)—100 (an average of 20 annually)

(K) Spinner dolphin (*Stenella longirostris*)—100 (an average of 20 annually)

(L) Striped dolphin (*Stenella coeruleoalba*)—9190 (an average of 1838 annually)

(M) Long-beaked common dolphin (*Delphinus capensis*)—23145 (an average of 4629 annually)

(N) Risso's dolphin (*Grampus griseus*)—17995 (an average of 3599 annually)

(O) Northern right whale dolphin (*Lissodelphis borealis*)—7935 (an average of 1547 annually)

(P) Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—7020 (an average of 1404 annually)

(Q) Short-beaked common dolphin (*Delphinus delphis*)—197350 (an average of 39470 annually)

(R) Melon-headed whale (*Peponocephala electra*)—100 (an average of 20 annually)

(S) Pygmy killer whale (*Feresa attenuata*)—100 (an average of 20 annually)

(T) False killer whale (*Pseudorca crassidens*)—100 (an average of 20 annually)

(U) Killer whale (*Orcinus orca*)—70 (an average of 14 annually)

(V) Short-finned pilot whale (*Globicephala macrorhynchus*)—260 (an average of 52 annually)

- (W) Dall's porpoise (*Phocoenoides dalli*)—3145 (an average of 629 annually)
- (iii) Pinnipeds:
  - (A) Northern elephant seal (*Mirounga angustirostris*)—4795 (an average of 959 annually)
  - (B) Pacific harbor seal (*Phoca vitulina*)—28380 (an average of 5676 annually)
  - (C) California sea lion (*Zalophus californianus*)—277530 (an average of 55506 annually)
  - (D) Northern fur seal (*Callorhinus ursinus*)—6185 (an average of 1237 annually)
  - (E) Guadalupe fur seal (*Arctocephalus townsendi*)—5340 (an average of 1068 annually)
- (2) Level A Harassment and/or mortality of no more than 10 beaked whales (total), of any of the species listed in §216.272(c)(1)(ii)(D) through (G) over the course of the 5-year regulations.

#### §216.273 Prohibitions.

Notwithstanding takings contemplated in §216.272 and authorized by a Letter of Authorization issued under §§216.106 and 216.277, no person in connection with the activities described in §216.270 may:

- (a) Take any marine mammal not specified in §216.272(c);
- (b) Take any marine mammal specified in §216.272(c) other than by incidental take as specified in §216.272(c)(1) and (2);
- (c) Take a marine mammal specified in §216.272(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
- (d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§216.106 and 216.277.

#### §216.274 Mitigation.

- (a) When conducting activities identified in §216.270(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.277 must be implemented. These mitigation measures include, but are not limited to:

(1) Navy's General SOCAL Maritime Measures for All Training at Sea:

(i) Personnel Training (for all Training Types):

(A) All commanding officers (COs), executive officers (XOs), lookouts, Officers of the Deck (OODs), junior OODs (JOODs), maritime patrol aircraft aircrews, and Anti-submarine Warfare (ASW)/Mine Warfare (MIW) helicopter crews shall complete the NMFS-approved Marine Species Awareness Training (MSAT) by viewing the U.S. Navy MSAT digital versatile disk (DVD). All bridge lookouts shall complete both parts one and two of the MSAT; part two is optional for other personnel.

(B) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (Naval Education and Training Command [NAVEDTRA] 12968-D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced lookout. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). Personnel being trained as lookouts can be counted among required lookouts as long as supervisors monitor their progress and performance.

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(ii) Operating Procedures and Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) COs shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.